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Supreme Court of the United States

OCTOBER TERM, 1959

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	4
Reasons for granting the writ	7
Conclusion	16
Appendix A	19
Appendix B	28
Appendix C	29

CITATIONS

Cases: PAGE

Commissioner v. Dravo, 119 F. (2d) 97 ... (n. 10) 10

Fahey v. Mallonee, 322 U. S. 245 13

Fahey v. O'Melveny & Myers, 200 F. (2d) 420 13

Federal Land Bank v. Crosland, 261 U. S. 374 ..10, 11

Laflin & Rand Powder Co. v. Burkhardt, 97 U. S. 110 10

Pittman v. Home Owners Loan Corp., 308 U. S. 21 7, 8, 10, 11, 12, 13

Socony Vacuum Oil Co. v. C. M. Johnston & Sons, 103 F. (2d) 275 .....(n. 7) 10

State v. Minnesota Fed. Savings & Loan Ass'n., 218 Minn. 229, 15 N. W. (2d) 568 .....(n. 10) 11

Statutes:

Sec. 10 Federal Home Loan Bank Act of 1932, 47 Stat. 731, 12 U. S. C. 1430 .....2, 4, 6

Sec. 13 Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U. S. C. 1433 .....2, 6, 7, 8, 10

Sec. 5(h) Home Owners Loan Act of 1933, 48 Stat 133, 12 U. S. C. 1464(h) 3, 4, 6, 7, 11, 12, 13

Section 65-688 of the Code of Laws of South Carolina, 1952 .....3, 6

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above cause on February 5, 1960.

OPINION BELOW

The Opinion and order of the Supreme Court of South Carolina (Appendix A, *infra*, pp. 19-27.) is reported at 112 S. E. (2d) 716.

JURISDICTION

The judgment of the court below, contained in the opinion (Appendix A, *infra*, p. 27), was entered on February 5, 1960. A timely petition for rehearing was denied on February 26, 1960 (Appendix B, *infra*, p. 28). The time for filing for writ of certiorari was extended by Mr. Chief Justice Warren on May 2, 1960, to June 4, 1960 (Appendix C,

infrg. p. 29). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3) and 2101 (e).

QUESTION PRESENTED

Whether South Carolina may tax the "note or obligation" required by Federal law (12 U. S. C. 1430 (c)) to secure Federal Home Loan Bank "advances" which are specifically exempted from State taxation by 12 U. S. C. 1433.

STATUTES INVOLVED

Section 10 of the Federal Home Loan Bank Act of 1932, 47 Stat. 731, 12 U. S. C. 1430, as amended, provides in pertinent part as follows:

> (a) Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. • • •
>
> (c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. • • •

Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U. S. C. 1433, as amended provides:

> Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing

authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in [*sic*] any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any homeowner debtor of such bank.

Section 5 (h) of the Home Owners Loan Act of 1933, 48 Stat. 133, 12 U. S. C. 1464 (h) as amended, provides:

(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 28, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

Section 65-688 of the Code of Laws of South Carolina of 1952 provides as follows:

The tax on promissory notes, except bank notes issued for circulation and executory contracts for the

payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed, non-negotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents:

STATEMENT

Petitioner, a Federal savings and loan association with its principal place of business at Laurens, South Carolina ("The Association") (R. 1, 3), was chartered pursuant to 12 U. S. C. 1464 (a), and is a member of the Federal Home Loan Bank of Greensboro, North Carolina ("The Bank") as required by 12 U. S. C. 1464 (f). Under protest, the Association paid State documentary taxes on the notes which (12 U. S. C. 1430 (e)) required it to issue in order to obtain Bank "advances". In this action petitioner sought, but was denied, recovery of the taxes paid.

In order to place in proper context the issue in the case, we summarize briefly the salient features of the Federal Home Loan Bank system and its relation to the Federal savings and loan associations.

The Federal Home Loan Bank System:[1] In 1932, Congress established the Federal Home Loan Bank system, which consists of the Federal Home Loan Bank Board ("the Board") (constituted pursuant to 12 U. S. C. 1437) and a number of Federal Home Loan Banks located in as many districts (see 12 U. S. C. 1423), including the Federal Home

[1] For a comprehensive account of the organization and activities of the Federal Home Loan Bank system, see 1959 ANN. REP. FEDERAL HOME LOAN BANK BOARD, esp. at 15-16, 49-51, 55-56.

Loan Bank of Greensboro, North Carolina. Upon its organization, each bank issued capital stock (12 U. S. C. 1426) to which various eligible savings and loan institutions (see 12 U. S. C. 1424) could subscribe and thus become "members" of the Bank (see 12 U. S. C. 1426 (c)). Upon incorporation, a Federal savings and loan association, such as petitioner, automatically becomes a member of the Bank of the district in which it is located (12 U. S. C. 1464 (f); see also 12 U. S. C. 1424), and petitioner is in fact a member of the Greensboro Bank (see R. 3, 4).[2]

In 1933, Congress authorized the establishment of "associations to be known as 'Federal Savings and Loan Associations'." They are intended to function as "local mutual thrift institutions in which people may invest their funds" and to facilitate "the financing of homes" (12 U. S. C. 1464 (a); see also 12 U. S. C. 1465). Such associations are capitalized through issuance of stock to shareholders (12 U. S. C. 1464 (b)), and through purchase by the United States of "preferred shares" (12 U. S. C. 1464 (q)), and "full-paid income shares" (12 U. S. C. 1646 (j)). The Federal associations' ordinary functions are to lend funds secured by their shares or by first mortgages upon homes (12 U. S. C. 1464 (c)), although an association may also be required to serve as a "fiscal agent of the Government" or as "agent for any other instrumentality of the United States" (12 U. S. C. 1464 (k)). The Federal Home Loan Bank Board supervises association activities, and may appoint a "conservator or receiver" of the association for various reasons including "unsafe or unsound operation" of the association (12 U. S. C. 1464 (d)).

Member and nonmember Bank borrowers, including Federal associations, are "entitled to apply in writing for

[2] A Federal savings and loan association may not unilaterally withdraw from its Bank membership, unlike other Bank members who may sever relations on six months notice. 12 U. S. C. 1426 (i).

advances" from the Bank. (12 U. S. C. 1429). Such "advances" "shall be made upon the note or obligation" of the borrower (12 U. S. C. 1430 (c)), and are ordinarily secured by home mortgages or by Government issued or guaranteed obligations (12 U. S. C. 1430 (c); see also 1430 (b)). A member securing such an "advance" shall enter into a primary and unconditional obligation to repay it with interest and costs, etc. (12 U. S. C. 1430 (d)).

"Advances" [3] by the Bank are "exempt from all taxation, now or hereafter imposed * * * by any State, county, municipality, or local taxing authority," as well as from Federal taxation. 12 U. S. C. 1433. As for Federal associations, 12 U. S. C. 1464 (h) forbids any "State, Territorial, county, municipal, or local taxing authority" to impose a discriminatory tax upon "such associations or their franchise, capital, reserves, surplus, loans or income * * *." Associations are (with minor exceptions) relieved of all Federal taxation.

Laurens Federal Savings & Loan Association: Petitioner is a duly organized member Association of the Greensboro Federal Home Loan Bank. Between August 12, 1953, and October 7, 1957 (R. 7), it secured ten advances aggregating $5,675,000.00 from the Greensboro Bank, each time executing for the advance the required promissory note secured by home mortgages.

South Carolina, like various other states, imposes a documentary stamp tax upon promissory notes given by borrowers. S. C. Code 65-688. Respondent South Carolina Tax Commission assessed taxes of $2,270.00 upon the "notes" given by petitioner to the regional Federal Home Loan Bank at Greensboro, North Carolina. Petitioner paid

[3] Besides "advances", 1433 also forbids local taxation on "[t]he Bank, including its franchise, its capital, reserves, and surplus * * * and its income * * *." However, 1433 provides one exception to the general interdiction on local taxation, by specifically permitting local taxes on the Bank's real property.

the tax, under protest, and timely filed suit in the Court of Common Pleas of Laurens County to recover the amount of the tax, claiming in its complaint (R. 3-7), that the South Carolina documentary stamp tax is "in direct violation of the tax exemption granted this plaintiff and the Federal Home Loan Bank of Greensboro by the Federal Home Loan Bank Act, 12 U. S. C. A. 1421 *et seq.* • • • (R. 6). Respondent's Answer (R. 8-9) asserted the state tax to be "just, legal and proper and specifically authorized by the • • • Home Owners Loan Act of 1933, more specifically, 12 U. S. C. A. 1464 (h)" (R. 8). The trial court held (R. 9-13), and the Supreme Court of South Carolina affirmed the holding (Appendix A, *infra*, at p. 27), that the tax was authorized by Federal law.

The State Court Opinion: The Court concluded that the language of Section 1433 granting "immunity • • • from taxation applies only to the Federal Home Loan Bank" (*id., infra,* at p. 22), and that South Carolina had "not sought to place any documentary tax" upon the Bank but had assessed it only against petitioner (*id., infra,* at p. 22). The opinion distinguished this Court's decision in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939)—which invalidated a Maryland documentary tax on a mortgage securing a HOLC loan and offered for recordation by HOLC—as "not applicable under the factual situation here" on the theory that the *Pittman* mortgage "was offered for record by the Home Owners' Loan Corporation" and not by the borrower association (*id., infra,* at p. 23).

REASONS FOR GRANTING THE WRIT

This case presents an issue which is of substantial and continuing public concern in the administration of an important Federal statute, and which has not been precisely decided by this Court. The Supreme Court of South Caro-

lina has determined the question contrary to applicable decisions of this Court. Since The State Court's ruling is based wholly upon its construction of Federal statutes, review by this Court will, therefore, require no interpretation or application of State statutes or common law. Finally, this petition affords petitioner its sole opportunity to obtain Federal court determination of a Federal issue of significance both to petitioner, to the industry, and to the public generally.

1. Section 13 of the Federal Home Loan Bank Act, 47 Stat. 725 at 735, 12 U. S. C. 1433, provides that "advances" by the Federal Home Loan Bank "shall be exempt from all taxation now or hereafter imposed * * * by a State, county, municipality, or local taxing authority." Section 10 authorizes the Bank "to make advances to its members", including associations such as petitioner, only "upon the note or obligation of the member * * * borrower" (12 U. S. C. 1430 (c)), and upon proper security (12 U. S. C. 1430 (a)). Since South Carolina has imposed a documentary tax upon the statutorily required "note or obligation", it is an indirect, though none the less forbidden tax upon the "advance" itself, since the "note or obligation" without which an "advance" could not be made by the Bank, is a part of the entire loan transaction. The tax itself is precisely determined by the amount of the "advance" since the association's "note or obligation" is given for the "advance" which the Bank makes to it.

On these questions, this Court's unanimous[1] decision in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939) is conclusive. That case sustained an injunction against a recording tax imposed upon mortgages issued as security for loans by the Home Owners Loan Corporation, a now

[1] Except for Mr. Justice Butler who did not participate in the case. 308 U. S. at 33.

abolished subsidiary of the Federal Home Loan Bank Board.[5] The statute (Section 4 (c) of the Home Owners Loan Act of 1933)[6] which was held to invalidate the state tax provided that "[t]he Corporation, including * * * its loans * * * shall likewise be exempt from such taxation", *i. e.* "from all taxation * * * now or hereafter imposed * * * by any State, county, municipality, or local taxing authority." This Court held that it was immaterial who paid the tax, since "whoever pays it it is a tax upon the mortgage, and that is what is forbidden by the law of the United States" (308 U. S., at 31). In construing the statute, the Court regarded the word "loans" as the "critical term" and held that "in order to carry out the manifest purpose of the broad exemption" from State taxation, the term "should be construed as covering the entire process of lending, the debts which result therefrom, and the mortgages given to the Corporation as security" (*Id.* at 31), since "[b]oth the mortgage and its recordation were indispensable elements in the lending operations authorized by Congress" (*Id.* at

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[5] Congress, as an emergency measure, in 1933 authorized the Federal Home Loan Bank Board to organize the Home Owners Loan Corporation. (See the Act's preamble, 48 Stat. 128, and Section 4(a), 48 Stat. 129). The Corporation stood in substantially the same relation to the Board as the Federal Home Loan Banks except that eligible "member" savings and loan associations subscribed to Bank stock, while the Secretary of the Treasury underwrote the Corporation. Section 4(b), Stat. 129. The Corporation was eventually abolished as a separate entity in the reorganization of the Executive Department of the Government. See the statutory references collected in the note to 12 U. S. C. 1463.

[6] Section 4(c), 48 Stat. 128 at 130 (see also 48 Stat. 643 at 644), 12 U. S. C. 1463(c) (1946 ed.), provided as follows:

The bonds issued by the Corporation under this subsection shall be exempt both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. (This section is quoted in the *Pittman* decision, 303 U. S. 21 at 31,n.3.)

32). See also *Federal Land Bank v. Crosland*, 261 U. S. 374 (1923).

The decision of the Supreme Court of South Carolina directly conflicts with the principles enunciated in *Pittman*, and, indeed, with *Pittman's* holding insofar as this Court has held that the mortgage and loan must all be considered part of a single transaction. The two Federal statutes are identical except that the term "advances" appears in 12 U. S. C. 1433 in the same position that "loans" occupied in Section 4 (c) of the Home Owners' Loan Act. This substitution of terms, however, does not affect the identity of meaning of the statutes, since "loans" and "advance" have the same meaning in the present context. Compare *Laflin & Rand Powder Co. v. Burkhardt*, 97 U. S. 110, 117 (1878).[7] Both statutes grant an equally "broad exemption" from State taxation. Like the "loans" in *Pittman*, the term "advances" in 1433 should be "construed as covering the entire process of lending" including "the debts which result therefrom" (308 U. S. at 31). Similarly, the "note or obligation" which Section 1433 requires for obtaining a Bank "advance"—like the mortgage required as security for an HOLC loan—is an "indispensable element in the [Bank's] lending operations authorized by Congress" (*Id. at* 32).

The South Carolina court sought to avoid *Pittman's* impact on the ground that since the mortgage in that case was "offered for record by" the HOLC, it is "readily apparent"

[7] "To 'advance' is to 'supply beforehand,' 'to loan before the work is done or the goods made.' This is the popular understanding of the language, as well as the accurate definition." *Laflin case*, 97 U. S. 110 at 117. "The term 'advance' is generally used to refer to a payment of money before it is due * * *" (*Commissioner v. Drave*, 119 F. (2d) 97, 100 (3d Cir. 1940)), and "unquestionably, it may have the meaning of a loan if * * * used in connection with a promise, express or implied to repay that money" (*Socony Vacuum Oil Co. v. C. M. Johnston & Sons*, 103 F. (2d) 275, 278 (8th Cir. 1939)). See generally, 2A Words and Phrases 117-119 (Perm. Ed. 1955), and 1 Oxford English Dictionary 113 (1933) under "Advance" (vb. and n. [8]).

that *Pittman*" is not applicable under the factual situation here" (Appendix A, *infra* at p. 23). But the short answer to this contention is that "whoever pays it" [the tax]—whether the Bank which makes the "advances", or petitioner who can secure such "advances" only upon its "note or obligation" (Section 1430)—"it is a tax upon" the Bank's tax-exempt "advances", and "that is what is forbidden by the law of the United States."[9] *Pittman case, supra,* at 31; *Federal Land Bank v. Crosland,* 261 U. S. 374, 378-379 (1923).[9]

2. Contrary to the holding of the South Carolina court, Section 13 of the Home Owners' Loan Act of 1933, 12 U. S. C. 1464 (h), does not authorize the present tax which, as we have shown (*supra,* pp. 8-10), is invalid under Section 1433 and the *Pittman* decision.

The Home Owners' Loan Act established Federal savings and loan associations and relieved them of all State taxes except those specifically authorized by Section 13,[10] which permits nondiscriminatory imposts upon an association's "franchise, capital, reserves, surplus, loans [and] income." This section, on its face, does not authorize State taxes upon transactions between associations and the original Federal Home Loan Banks of which they are members.[11] Nor, absent clear Congressional consent, should this language be read as sanctioning a State tax which in substance

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[9] This similarly meets the South Carolina's court's suggestion that the *Pittman* "tax was sought to be imposed against the corporation which was immune from such tax by reason of the Federal Statute" (Appendix A, *infra* at p. 23).

[9] Although the South Carolina court, in sustaining the tax, observed that petitioner is not "such a Federal instrumentality or agency entitling it to exemption" (Appendix A, *infra* at p. 24), we do not argue this point, as it is clear that 12 U. S. C. 1433 blocks an indirect, though nonetheless effective, State tax upon Federal Home Loan Bank advances.

[10] *State v. Minnesota Fed. Savings & Loan Ass'n,* 218 Minn. 229 at 238, 15 N. W. (2d) 568 at 573 (1944): "An association is free from taxation by states except to the extent that Congress may permit it."

[11] Section 1464(h) consent to tax "associations or their • • • loans" refers to loans made by associations to *their* borrowers (such as home purchasers) and clearly not to transactions between the Bank and the association.

falls upon Bank "advances" specifically exempt under Section 1433, and which taxes only in form the "note or obligation" required for an association to obtain Bank loans. Moreover, such reading would plainly thwart "the manifest purpose of the broad exemption" of Section 1433 which, as *Pittman* recognized (308 U. S. at p. 31), "should be construed as covering the entire process of lending" between Bank and association. Finally, there is no legislative history to show that Congress intended, either in the original enactment of Section 1464 or in any of the amendments to it, to validate such taxes as South Carolina has imposed here."[12]

Under these circumstances we submit that the State court erred in holding that the "provisions of 12 U. S. C. A. 1464 (h) are clear, unambiguous and unequivocal" and that "Congress [has] expressly granted to the [State] taxing authority the right to impose and collect such" taxes as South Carolina assessed here. The fact stressed by the court (see Appendix A, *infra* at p. 25) that the tax is nondiscriminatory is beside the point, since no State tax, discriminatory or not, is valid unless Secton 1464 (h) permits it.

3. The State court's ruling also frustrates basic Congressional policy.

A major objective of the Home Owners' Loan Act of 1933 is to establish "local mutual thrift institutions in which people may invest their funds" and "to provide for the financing of homes." 44 Stat. 132, 12 U. S. C. 1464 (a);

[12] Although no less than nine amendments or revisions of Section 1464 occurred after *Pittman*, Congress did not at any time disapprove that decision, or attempt either here or elsewhere to endorse State taxes of the kind outlawed by *Pittman*. These revisions are listed in the "Note" to Section 1464 in the United States Code. Subsection (h) was itself amended in 1951 (65 Stat. 490). It previously had been amended in August 1939 (53 Stat. 1402), prior to the *Pittman* decision in November 1939 (see 308 U. S. 21), but four months after the grant of certiorari on April 17, 1939 (306 U. S. 628) and long after the Maryland decision on December 1, 1938 (175 Md. 512, 2 A. (2d) 689) which this Court unanimously affirmed.

see also 48 Stat. 134, 12 U. S. C. 1465. Federal savings and loan associations are thus "created, insured and aided by the Federal Government" (*Fahey v. Mallonee*, 332 U.S. 245, 250 (1947)) as a part of "a comprehensive legislative program" promoting home ownership and implemented by "large appropriations" from Congress (*Fahey v. O'Melveny & Myers*, 200 F. (2d) 420, 465 (9th Cir. 1952)); their "close financial relationship" with the Government reflects their "many special privileges and advantages" and "peculiar status" under the Federal "legislative scheme" (*id.* at 465).

Such taxes as South Carolina and other states have imposed interfere with these efforts to make home financing opportunities widely available at minimal cost to the ultimate borrower.[13] In the aggregate, the taxes are substantial in amount (see *infra* at p. 15). Moreover, the taxes, measured as they are by the dollar amount of the Bank "advances" for which the association gives its "note or obligation," are, as we have shown, in effect indirect imposts upon the Bank's "advances"; and "that is what is forbidden by the law of the United States (*Pittman case, supra*, at 31). In all events, the taxes are necessarily passed on by the associations in the form of increased home-financing costs to their homeowner-borrowers, contrary to the Congressional purpose of securing low net borrowing costs to the ultimate borrower. In the light of these clear policy objectives, which the State court altogether ignored, Section 1464 (h)'s limitation upon association tax-immunity should not be needlessly stretched to sustain State taxes which are not fairly authorized by the language of 1464.

[13] The maintenance of low net cost to the ultimate homeowner-borrower is also reflected in 12 U. S. C. 1425 which excludes or expels from Bank membership, and denies all borrowing privileges to, any institution whose total charges (less specified deductions) "create an actual net cost to the home owner" exceeding lawful interest rates.

4. Finally, the question presented is one of substantial and continuing public importance. The lower court's decision is a general determination that Congress has validated State documentary stamp taxes upon borrowing transactions between Federal Home Loan Banks and their member institutions, including Federal savings and loan associations such as petitioner. Besides South Carolina, Pennsylvania [14] and Florida [15] also provide for, and presumably are collecting, such taxes. It seems reasonable to assume that other States will not long overlook this source of additional revenue if the present tax is upheld.

The aggregate dollar volume of South Carolina's taxes on association transactions with the Greensboro Bank is substantial, and will likely increase in the future as the volume of advances continues its upward trend.[16] For petitioner alone, a median-size institution,[17] the State tax on its notes to the Greensboro Bank amounted to $2,270.00 for the four-year period August 12, 1953—October 7, 1957. Besides petitioner, in South Carolina there are 42 Federal and 27 State chartered associations [18] all of which are members of the Greensboro Bank and whose borrowing transactions with the Bank are therefore subject to South Carolina's documentary stamp tax. As of December 31, 1959, outstanding advances from the Greensboro Bank to its 70 South

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[14] Purdon's Penna. Stats. Ann. §72-203(p) (1949).

[15] Fla. Stats. §201.08(1) (1955).

[16] See 1959 Ann. Rep. Federal Home Loan Bank of Greensboro (hereinafter cited as "Ann. Rep. (Greensboro)") at 10-11; see also 1958 Ann. Rep. (Greensboro) at 10-11.

[17] As measured by its assets of $7.5 million on December 31, 1958. Of the State's 43 federal associations (see note 18 *infra*) 15 are larger than petitioner, including 6 institutions with assets ranging from $20 to over $35 million; 27 federal associations are smaller in assets. Statistics furnished by the South Carolina Savings and Loan League, Columbia, S. C.

[18] See 1959 Ann. Rep. (Greensboro) at 6. The number has steadily grown. For 1958, there were 42 federal and 25 state association members (1958 Ann. Rep. (Greensboro) at 6); and for 1957 the corresponding figures were 41 and 22 respectively (1957 Ann. Rep. (Greensboro) at 10).

Carolina member associations amounted to $21,076,000;[19] on the "note[s] or obligation[s]" required by 12 U. S. C. 1430 (c) to obtain these advances, the State tax payable amounts to $8,430.40. Indeed, the total tax paid and payable is substantially understated, since the dollar volume of Bank advances throughout an entire calendar year—including both new advances and renewals, both of which are subject to South Carolina's tax—is considerably larger than the volume of advances outstanding on a given date.[20]

For the Greensboro Bank's area as a whole, as well as in South Carolina, in 1959 "[a]ssociations turned to the Bank more often, and in greater dollar volume, than ever before to help them meet their loan demands." [21] 1959 Ann. Rep. (Greensboro) at 4.

Finally, the adverse impact of such unauthorized exactions is likely to be increased by prevailing industry conditions in the Greensboro Bank's district. In the last several years, the operating expenses of member associations have substantially increased relative to operating income, both for the district as a whole (1959 Ann. Rep. (Greensboro) at 18-19) and for South Carolina (*Id.* at 14-15). In addition, member associations faced and continue to encounter a

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[19] This figure appears in 1959 Ann. Rep. (Greensboro) at 14-15. The upsurge in borrowing transactions between the Bank and its South Carolina member associations is notable. On December 31, 1958, advances outstanding were $5,730,000 (1958 Ann. Rep. (Greensboro) at 14-15) [illegible] for December 31, 1957, it was $8,621,500 (1957 Ann. Rep. (Greensboro) at 8-9).

[20] Thus, as of December 31, 1959, the Greensboro Bank had, for the entire district, outstanding advances of $234,430,250. 1959 Ann. Rep. (Greensboro) at 12; see also 1959 Ann. Rep. Federal Home Loan Bank Board at 57. But the District's aggregate volume of advances for 1959 was $217,300,000 in "new advances", and $115,500,000 in "renewals", for a total of $332,800,000. 1959 Ann. Rep. (Greensboro) at 5. The aggregate volume of "new advances" and "renewals" is not available on a state-to-state basis, as are the figures cited for advances outstanding on the last day of the calendar year. Nor is there a state-to-state breakdown of the volume of advances to federal and to state-chartered association members, although for the nation as a whole the federal-state ratio is roughly 3 to 2. 1959 Ann. Rep. FHLB Board at 18.

[21] The same was true in 1959 for the System as a whole. 1959 Ann. Rep. FHLB Board at 1.

"tremendous home loan demand" (*Id.* at 3), a sharp rise during 1959 of interest rates (from 3% to 5%) on Bank advances (*Id.* at 5), and as a result 1960's "most pressing problem," a severe "income squeeze" (*Id.* at 8). This latter is due to the fact that most associations, which must continue to pay dividends on their depositors' savings, have reached the legal or competitively imposed limit of interest rates they can charge their homeowner-borrowers—their chief income source. In consequence, less money is available for the "loss reserves" needed to safeguard their depositors' savings (*Ibid.*).[22] Against this background, the economic impact of documentary taxes on Association-Bank transactions is greatly magnified, to the point where, realistically, they can seriously handicap the Congressional program of promoting financially sound, low-cost home financing institutions. These facts demonstrate the continuing importance of this issue of Federal law, and the desirability of its early resolution by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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[22] "Those who have accepted the responsibility of handling the savings of millions of people have also accepted the obligation of safeguarding these savings by building or maintaining adequate loss reserves." 1959 Ann. Rep. (Greensboro) at 8.